United States – Anti-Dumping Measures On Certain Hot-Rolled Steel Products From Japan (DS184)

Oral Statement of the United States
First Meeting of the Panel
August 22, 2000

1. ***Mr. Hirsh.*** Thank you, Mr. Chairman and members of the Panel. The United States appreciates this opportunity to present its views regarding the issues in this dispute. Again for the record, my name is Bruce Hirsh. I am a Legal Advisor with the Office of the U.S. Trade Representative in Geneva. With me from my office in Washington is Associate General Counsel Dan Mullaney, who will begin our presentation today with a discussion of three procedural issues. John McInerney, Acting Chief Counsel for Import Administration at the U.S. Department of Commerce, will then present the issues concerning the anti-dumping calculations and critical circumstances. Finally, Tina Kimble, Attorney-Advisor in the Office of the General Counsel of the U.S. International Trade Commission, will present the issues concerning injury.

2. ***Mr. Mullaney.*** Thank you, Mr. Chairman, and members of the Panel. First, Japan has based part of its argument on evidence that was not presented to the national investigating authorities and is not part of their administrative records. The Japanese producers had ample opportunity to present this evidence to the Commerce Department and the USITC during the course of their investigations, but chose, instead, to wait until this Panel proceeding. (1st U.S. sub., ¶ 56 - ¶ 68.)

3. The submission of new material in this proceeding is inconsistent with Article 17.5(ii) of the Agreement, which requires that the Panel's examination of the matter before it be based upon the facts made available to the authorities of the importing Member. Consideration of this new material would deny parties to the anti-dumping investigation, including the U.S. domestic industry, the protection of Article 6.2 of the Agreement, which guarantees them "a full opportunity for the defense of their interests." Such interested parties cannot have a full opportunity to defend their interests if the responding exporter/manufacturers can withhold relevant evidence until a WTO panel proceeding in which the other interested parties may not participate. This is not a case about whether the U.S. authorities improperly excluded information from their administrative records. This is a case about information that could have and should have been submitted on the record by the Japanese respondents, but was not.

4. Second, Japan has raised an issue that is outside this Panel's terms of reference. In its panel request, Japan stated plainly that it was challenging the Department's *application* of facts available to the Japanese respondent companies in this particular investigation. In its first written submission, however, Japan has argued that the Department's *entire practice* of making adverse inferences in selecting the facts available to be applied to uncooperative respondents is inconsistent with Article 6.8 and Annex II of the Agreement. (Japan's 1st sub., ¶ 57 - ¶ 60.) It is untrue that Japan's panel request properly set out this claim by referring generally to "conformity" of U.S. laws. The statement of a proper claim requires that the particular law or practice be identified. Japan's panel request does not do this.

5. Allowing Japan to introduce this new claim would be contrary to Article 6.2 of the Dispute Settlement Understanding, which requires the requesting parties to "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly." Japan's request failed altogether to disclose this new claim or its legal basis, thereby depriving other Members of information necessary to determine whether or not to intervene in the proceeding. (1st U.S. sub., ¶ 69 - ¶ 76.) It also prejudiced the United States in the preparation of its first submission, because of the limited time available after Japan's first submission.

6. Third, I would like to emphasize that this Panel's mandate under Article 17.6 of the Agreement permits the Panel to find that the U.S. determinations are inconsistent with the Agreement *only* to the extent that the Panel finds either that the United States' establishment of the facts was not proper, unbiased, and objective, or that a determination was not based on a permissible interpretation of the AD Agreement. This means two things.

7. First, this Panel is not a fact-finding body. Unless it finds that the authorities' establishment of the facts was improper or that their evaluation of those facts was biased and unobjective, the evaluation should not be overturned, *even if the Panel would have reached a different determination had the same facts been before it in the first instance*. (1st U.S. sub., ¶ 77 - 82.)

8. Second, the Panel must uphold the U.S. authorities' interpretations of the Agreement if those interpretations are *permissible*. Where there are several permissible interpretations of an Agreement provision, a panel must not impose its preferred interpretation on the Member

concerned. To do so would be to add impermissibly to the obligations to which the WTO Members have agreed. (1st U.S. sub., ¶ 83 - ¶ 87.)

9. I will now turn to my colleague, Mr. McInerney, of the Commerce Department, to present the anti-dumping and critical circumstances issues.

10. ***Mr. McInerney.*** Thank you Mr. Chairman. Japan's challenge to the Department's determination involves four broad issues, which I will briefly address in turn.

11. The first issue is the Department's **Resort to, and Selection of, Facts Available**. Japan begins by asking the Panel to rule that investigating authorities, in selecting facts available to be applied to uncooperative respondents, may *never* make the logical inference that the respondent withheld that information because it was adverse to the respondent. (Japan's 1st sub., ¶ 57 - ¶ 60.) Instead, Japan argues that investigating authorities must *always* fill *any* gaps in their information - - no matter how large, and no matter how blatantly the respondent refused to cooperate - - with neutral information.

12. The Panel should be very clear about Japan's position. Japan is *not* arguing that the Agreement carefully circumscribes the circumstances in which adverse inferences may be used, or that the Agreement limits the extent to which inferences may be adverse. Japan is *not* arguing that adverse inferences must be reasonable, fair, or corroborated. Instead, Japan is arguing that adverse inferences are *never* permitted - - to *any* degree or under *any* circumstances. Mr. Chairman, let me depart for a moment from the prepared text. In its oral statement Japan appears to have retreated from this position. However, they have not really departed from their earlier

position, but only make it appear that they are taking a slightly more reasonable position. We will prepare questions for Japan that I believe will show Japan has in fact not retreated from this extreme position.

13. Japan has been surprisingly clear about its motive for pressing this new argument. It has candidly acknowledged that it would like the Panel to remove the incentive that the facts available rule has traditionally provided for respondents to cooperate in investigations. (Japan's 1st sub., ¶ 59.) Because investigating authorities have no legal means to force foreign respondents to provide information, acceptance of Japan's argument would force investigating authorities to rely on such information as those respondents unilaterally elect to provide. That would turn antidumping investigations into pointless charades, a result which the Members cannot have intended.

14. A comprehensive review of Article 6.8 and Annex II of the Agreement demonstrates that they are designed *precisely* to provide uncooperative respondents with an incentive to participate in antidumping investigations. In our written submission, we have identified numerous passages in Article 6.8 and Annex II with which Japan's position cannot be reconciled. (1st U.S. sub., ¶ 54 - ¶ 68.)

15. With regard to the two specific applications of facts available at issue here, I will simply make a few brief observations. First, Japan asserts that KSC cooperated in the investigation, as required by Paragraph 7 of Annex II. (Japan's 1st sub., ¶ 61 - ¶ 77.) The facts on the record do not support Japan's assertion. KSC never even *discussed* with its Brazilian joint venture partner the need to provide the CSI data, and never made any serious effort to obtain information from

CSI. Instead, KSC was quite content with making pro-forma requests for the information. When those requests were declined, KSC did not even *attempt* to use any of its manifold powers under the joint venture shareholders' agreement to persuade CSI to supply the necessary information. These desultory gestures cannot possibly be construed as meaningful cooperation. (1st U.S. sub., ¶ 82 - ¶ 98.)

16. Second, Japan implies that NKK and NSC submitted within a reasonable period of time the conversion factors to enable the Department to convert sales based on theoretical weights into actual weights. (Japan's 1st sub., ¶ 105 - ¶ 108.) This is not a plausible claim. Each company was given 87 days to submit this information. This is ample time by any standard, and nearly triple the 30 days required by Article 6.1.1. The ease with which NKK and NSC eventually provided the information, once they had decided to do so, belies Japan's claim that they met the Agreement's standard for cooperation. (1st U.S. sub., ¶ 128 - ¶ 142.) Japan's argument also ignores the fact that Article 6.8 and Annex II repeatedly emphasize the importance of submitting information in a timely manner, as we have described in detail in our written submission. (U.S. sub., ¶ 143 - ¶ 149.)

17. The second issue is Commerce's **Determination of the "All-Others" Rate**. Japan argues that, in determining the estimated duty rate for companies that were not themselves investigated (or the "all others" rate), Article 9.4 requires investigating authorities to disregard any portion of a margin based in even the slightest degree on the facts available. (Japan's 1st sub., ¶ 136 - ¶ 139.) Japan's argument is based on the statement in Article 9.4 that, in calculating all-others

rates, investigating authorities shall disregard any margins "established under the circumstances referred to in paragraph 8 of Article 6," which is the facts-available provision.

18. Japan's interpretation of Article 9.4 is an absurdly broad and unworkable reading of that provision. A dumping margin is not "established under the circumstances" of the facts available rule merely because a component of that margin may be based on the facts available. Accordingly, Article 9.4 does not provide that "portions of margins established under the facts available rule" must be excluded. When Article 9.4 refers to "margins" that are "established under the circumstances" of the facts-available rule, it means *entire margins* that are based on the facts available. (1st U.S. sub., ¶ 176 - ¶ 191.)

19. The context of the Agreement supports this reading. Article 6.10 directs investigating authorities to determine "an individual margin of dumping for each known exporter or producer, where this is practicable." A margin that is substantially based on the data for a specific company is still very much an "individual margin" for that producer, even if it contains some components of facts available. It therefore is entirely appropriate for use in determining the rate for producers not investigated. On the other hand, it is reasonable to treat margins based *entirely* on facts available as not "individual margin[s]" for the producers in question, because they are based on secondary information, such as data from the petition. Thus, Article 6.10 provides a basis for distinguishing between margins based partially and entirely on the facts available. (1st U.S. sub., ¶ 180 - ¶ 184.)

20. Japan's absurdly broad reading of Article 9.4 would produce untenable results. While most foreign respondents who cooperate in antidumping investigations receive margins based very

substantially upon their own data, the use of facts available to fill gaps is quite common. NKK and NSC provide perfect examples of companies that received margins based overwhelmingly upon their own data, but with a small element of facts available. Nothing in the Agreement requires that these margins be disregarded in determining the all-others rate, or that the margins be recalculated so that they somehow exclude facts available.

21. The third issue is the Department's **Treatment of Home Market Sales Through Related Parties.** Here Japan makes two arguments: first, that the Department must not reject home market sales to related parties on the basis of its 99.5% test (Japan's 1st sub., ¶159); and second, that, even if the Department *could* reject home market sales to related parties, it could not replace them with the downstream home market sales by those related parties, but must substitute sales to third countries or constructed value (Japan's 1st sub., ¶ 162 - ¶164). Neither argument is sound.

22. First, **Commerce's rejection of certain sales to related parties in Japan** was consistent with the Agreement. The Department rejects sales to related parties as not in the ordinary course of trade because the prices between affiliated parties are inherently suspect. Article 2.1 of the Agreement provides that home market sales must be in the "ordinary course of trade," but does not define that term. Logically, however, sales in the "ordinary course of trade" are normal commercial sales, and a normal commercial sale is, first and foremost, a sale with a price negotiated at arm's length. Otherwise, affiliated entities could manipulate dumping margins by manipulating prices between them. Therefore, sales to related parties, for which the prices are not negotiated at arm's length, may be presumed to be outside the ordinary course of trade.

23. Commerce's 99.5% test simply provides that the Department will make an exception to the normal rule of exclusion for non-arm's-length sales, where a producer's prices to a related party are, on average, virtually as high as the prices of sales to unrelated parties. If the related party passes the test, the Department uses *all* of that producer's sales to that related party, both above and below the 99.5% threshold, in determining normal value. Overall, the effect of this rule is to increase the instances in which the Department bases normal value on home market sales, and to decrease the instances in which the Department must rely on downstream sales by related distributors.

24. If the Japanese producers thought that the sales that passed the 99.5% test would distort the dumping margins because they had higher than normal prices, there was nothing to prevent them from arguing that they were outside the ordinary course of trade for some other reason. In fact, the Japanese producers never argued that their sales to related parties in the home market were outside the ordinary course of trade. Had they done so, the Department would have considered the argument, and there would have been a determination on the issue for this panel to review.

25. Second, **Commerce's use of downstream sales by related distributors,** in instances where sales to related distributors fail the 99.5% test, is consistent with the Agreement. Article 2.1 defines normal value as "the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country." Downstream sales of the like product to the first unrelated buyer for consumption in the home market plainly come within this definition. It is irrelevant that the Agreement explicitly refers to downstream sales in discussing

export price, but does not explicitly mention them in discussing normal value. (1st U.S. sub., ¶ 230 - ¶ 236.)

26. The fourth issue is Commerce's **Early Determination of Critical Circumstances**. In its investigation, the Department found critical circumstances for one out of three of the mandatory Japanese respondents. The U.S. International Trade Commission, however, made a negative determination on the issue in its final determination of injury. Accordingly, no duties ever were, or will be, assessed on subject merchandise entered before the Department's preliminary dumping determination. (1st U.S. sub., ¶ 239). Although Japan does not contest the Department's discretion to make an early determination of critical circumstances, *per se*, it nevertheless argues that the early determination violated the Agreement in three respects.

27. First, Japan argues that the Department violated Article 10.6 by basing its preliminary determination of critical circumstances on the preliminary determination of the U.S. International Trade Commission that the imports posed a threat of injury (1st Japan sub., ¶ 201). Article 10.6, however, authorizes a finding of critical circumstances where an investigating authority finds that ". . . the importer should have been aware that the exporter practices dumping and that such dumping *would cause injury*." Article 3, footnote 9, states that "unless otherwise specified" the term "injury" includes "threat of material injury." Therefore, because Article 10.6 does not otherwise exclude "threat of material injury," its reference to "injury" includes threat of injury.

28. Second, Japan argues that the Department violated Article 10.7 of the Agreement because it did not have sufficient evidence that the conditions of Article 10.6 were satisfied (1st Japan sub., ¶ 201). Because "sufficient" is not defined, the term must be understood in context, and the

context here is that of a *preliminary* determination of critical circumstances. Article 10.7 permits an administering authority, at any time after the initiation of an investigation, to take measures necessary to collect final duties retroactively. This indicates that "sufficient evidence" is sufficient for that time, not the same degree of evidence that would be sufficient for a final determination.

29. The Department had "sufficient evidence" of all three conditions specified in Article 10.6, at the time of its preliminary determination of critical circumstances. As we have explained in full in our written submission, the petition in this investigation contained far more than the "mere allegations" that Japan has described. The 700 pages of exhibits in the petition contain very substantial information on all of the relevant points.

30. Finally, Japan argues that the U.S. statute is inconsistent with Articles 10.6 and 10.7 because it does not require explicit findings on every element specified in those articles for a finding of critical circumstances. (1st Japan sub., ¶ 208). This argument is invalid. A law is not inconsistent with a WTO Agreement merely because it does not explicitly repeat those obligations in domestic law. In order to be inconsistent with an international agreement, a domestic law must *require* actions that are inconsistent with the Agreement. (1st U.S. sub. at ¶ 282). In any event, the Department made a finding on every element specified in Articles 10.6 and 10.7 in making its early critical circumstances finding in this case.

31. Thank you, Mr. Chairman and members of the Panel. Mr. Chairman, if I may depart from the prepared text once more. I did not intend to take the Panel's time today to address Japan's allegations of bias. However, in light of Japan's opening statement, I would like to make a few observations on this point. Of the four main issues regarding the Department of Commerce in this

case, Japan has virtually admitted that three of these issues have nothing to do with the alleged bias. First, with respect to the facts available claim, the Department has applied facts available in literally hundreds of cases. Japan has provided no evidence that the application of facts available in this case was unusual or was related to the "Stand up for Steel" campaign. Notably, Japan has not alleged that the acceleration of this case prevented them from responding to the Department's questionnaires in any but a fully adequate manner. Second, regarding the all-others rate issue, there is nothing to differentiate this case from the multitude of other cases in which the Department has applied its all-others methodology. This methodology is standard procedure. Third, regarding the "99.5 percent" arms-length test, once again, this methodology involved nothing more than the Department's standard procedure. In fact, the only new aspects of this case were, first, its acceleration by twenty days, and second, the issuance of an early preliminary critical circumstances determination. The Department's decisions with regard to these two aspects of the case were well within the Agreement's provisions and the Department's discretion, given the context of the unprecedented import surge. In sum, we can only conclude that Japan feels that this is not a strong case and thus it needs to "juice it up" with the bias claims. If bias is to have an effect, the Panel should be able to put its finger on it, such as on a line of the computer program. I would like to urge the Panel to review the Department's exact calculations and methodology to find any so-called bias. Thank you, I will now turn over the opening statement to Ms. Kimble, who will present the injury issues regarding the U.S. International Trade Commission.

32. ***Ms. Kimble.*** Thank you, Mr. Chairman, and members of the Panel. I will now address Japan's allegations concerning the captive production provision of the U.S. antidumping statute and the United States International Trade Commission's determination finding material injury due to dumped hot rolled steel. I will first discuss why Japan's contentions regarding the captive production provision misread the U.S. statute and ignore provisions of the Antidumping Agreement. Then, I will show why Japan's arguments about the USITC's particular findings only reinforce the fact that the U.S. authority conducted a thorough and objective evaluation of all relevant factors in keeping with the Agreement.

33. ***The captive production provision is consistent with the Anti-dumping Agreement.*** Both Japan and the United States agree on one important point -- a determination of injury that is consistent with the Antidumping Agreement must assess injury to the industry as a whole. The U.S. statute directs the USITC to assess injury to the domestic industry, and defines the domestic industry as "producers as a whole of a domestic like product." The captive production provision is consistent with this statutory requirement and merely supplements it with an additional layer of analysis -- telling the USITC to focus primarily on the merchant market for particular factors when the USITC determines that certain threshold requirements are satisfied.

34. Congress expressly recognized in adopting the captive production provision that "focus primarily" on the merchant market did not mean to focus *exclusively*. The captive production provision instead contemplates a two-step approach -- first the USITC is to look at the data for the merchant market in particular as to certain factors, then it is to examine the data for the entire industry as to all factors.

35. Moreover, the threshold requirements for application of the captive production provision are designed to ensure that such a focus on the merchant market would be helpful to an appraisal of injury to the industry as a whole. The USITC first must determine that there is a significant amount of captive production *and* a significant amount of sales on the merchant market of the domestic like product. The statute thus limits application of the provision only to those circumstances where the merchant market is not inconsequential and an analysis of the merchant market, separate from total consumption, would be valuable to a consideration of injury to the domestic industry as a whole.

36. When there is a significant amount of captive production and significant sales on the merchant market, an analysis of the merchant market in particular is likely to shed light on certain factors listed in Article 3.4 of the Antidumping Agreement. In contrast, Japan's view that an authority may not focus either primarily or secondarily on the merchant market would militate against an adequate assessment of these factors. Most obviously affected are the Article 3.4 factors of output and sales. Sales only occur in the merchant market. Prohibiting an analysis which takes into account the merchant market, then, would have the effect of writing the requirement to examine sales out of the Agreement. Authorities only would be able to assess the impact of dumped imports on output. The U.S. statute assures an adequate consideration of both output and sales while Japan's position, contrary to Article 3.4, would systematically require output to be decisive over sales when there is significant captive production.

37. Indeed, some factors in Article 3.4, such as capacity utilization and productivity, pertain only to output. As to those factors, the captive production provision does not apply at all. As to

the factors where the captive production provision does apply, the statute explicitly requires that the analysis continue beyond an assessment of the merchant market to an assessment of the effects on the industry as a whole.

38. The two-step, segmented analysis called for by the captive production provision is similar to the type of analysis that a panel recently found consistent with the Antidumping Agreement. In *Mexico -- Antidumping Investigation of High Fructose Corn Syrup from the United States*, the panel determined that a finding of injury resting exclusively on an examination of only one segment of the market violates the Agreement. The decision stressed, however, that an examination of one, relevant segment of the market to determine the effect of subject imports on the industry as a whole may be a useful exercise in keeping with the Agreement. The captive production provision does not require an examination of one segment exclusively, the analysis criticized in *HFCS*, but requires the USITC to look primarily at the segment of the market most relevant to any consideration of the effects of dumped imports on the domestic industry as a whole -- the segment where competition with dumped imports occurs. The statute does not instruct the USITC to limit its analysis to that segment, however, and requires the USITC to make a material injury determination as to the industry as a whole. Such an approach is entirely in accord with Article 3.

39. ***The USITC's determination was based on objective evidence showing injury.*** In this case, the captive production provision was not outcome determinative. First, a dispositive majority of three Commissioners rendered a binding affirmative determination under U.S. law without applying the provision. Second, even those Commissioners that applied the provision

found that both trends in the merchant market and the overall industry trends showed that dumped imports were causing material injury. Therefore, even without applying the captive production provision, those Commissioners would have reached the same conclusion.

40. In keeping with Article 3.1, the USITC considered the volume, price, and impact of dumped imports on the domestic industry as a whole. In keeping with Article 3.2, the USITC found that the volume and share of consumption of dumped imports more than doubled in each year of the period of investigation while the domestic industry's market share declined significantly in both the merchant market and for the industry as a whole.

41. The USITC objectively considered all the required factors listed in Article 3 for both the merchant market and the entire industry in reaching its affirmative injury determination. The objective findings made by the USITC provide more than adequate support for an affirmative determination and address Japan's unfounded concerns with the decision rendered.

42. As to price effects, the USITC concluded that prices for both dumped imports and the domestic like product showed mixed trends until mid-1997, after which point they dropped steadily for the remainder of the period of investigation. The USITC found that prices declined much more than domestic producers' costs and that at the same time consumption increased. It identified no change that could explain this new price pattern other than the fact that beginning in 1997, the frequency of underselling by dumped imports also increased as their volumes surged. The USITC found that these trends established a causal relationship between the increasing dumped imports and the significant depression of U.S. prices.

43. Finally, the USITC's analysis complied with Article 3.4 in its assessment of the negative impact that dumped imports were having on the domestic industry. Domestic producers' market share declined at a time of growing consumption because dumped imports captured all the growth in the market in 1998. As a result, the domestic industry's appropriate capacity increases were immediately transformed into excess capacity. As the USITC found, these effects were reflected in significant deterioration of the domestic industry's financial performance.

44. Japan falsely portrays the USITC as using comparisons based only on two year changes in data. The USITC both analyzed trends over the entire three year period of investigation and performed an analysis based on the most recent period. The USITC has used this approach in many prior cases where it found that the most recent period was highly probative of the current state of the industry because of recent changes in the market conditions affecting the industry. As we noted in our brief, this analytical approach has led the USITC to reach both affirmative and negative determinations in the past, and thus reflects neither a bias or a departure from past practice.

45. Further, analyzing trends within the period of investigation is entirely in keeping with the Antidumping Agreement. Trends for the latter part of the period of investigation obviously are particularly revealing about the *current* injury faced by the domestic industry -- the question that the USITC was charged with addressing. Examining data for the more recent years is in keeping with the direction in Articles 3.4 and 3.5 to examine all relevant economic factors and all relevant evidence before the authorities when conditions affecting the state of the industry changed over the course of the period of investigation.

46. Here, the behavior of dumped imports and the domestic industry underwent great change in the last two years investigated. Although Japan claims that 1997 was a banner year, demand did not reach a record high until 1998. Yet, in spite of this record demand, U.S. shipments and market share were at their lowest points in 1998. Accordingly, in keeping with Article 3.4, the USITC sought to explain why the domestic industry's performance declined in 1997 to 1998 when it should have improved and found that trends in dumped imports provided the answer. The USITC found, for example, evidence of increased underselling by dumped imports in the last period. The USITC had to consider this last two-year period in order to understand the nature of the important, and somewhat contradictory, economic trends borne out by the data for these last two years.

47. Contrary to Japan's argument, the USITC followed the requirement that it not attribute to dumped imports the effects of other causes. The GATT panel in *Norwegian Salmon* held it was not necessary to quantify other causes and the effects of other causes need not be isolated in order to satisfy that legal requirement. Rather, that panel held it sufficient that other factors did not entirely explain the evidence of injury found by the authority. Here, the USITC clearly examined other factors and found that they did not explain the indicators of injury which the evidence otherwise linked to dumped imports. The USITC properly did not attribute to dumped imports injury due to other factors, in keeping with Article 3.5.

48. The USITC identified the strike at General Motors as having an influence on domestic prices for hot rolled steel. However, it found that the strike could only partially explain the price declines that occurred in 1998 because, despite the strike, apparent consumption in the United

States rose to record heights rather than falling. The USITC concluded that only the increased volume of dumped imports and an increase in underselling of those imports could explain this paradoxical trend.

49. Similarly, the decrease in demand for pipe and tube cannot establish that the USITC attributed to dumped imports the effects of other causes. Despite that decrease in one source of demand, overall demand rose in 1998. An increased volume of undersold dumped imports provides an explanation of why prices declined in the face of increasing demand. The fall in demand for one particular type of product which did not reduce overall demand does not.

50. The USITC recognized the effect on the domestic industry of intra-industry competition between integrated producers and minimills. It found, however, that dumped imports drew down prices for both integrated producers and minimills. The USITC found that more of minimills' output is devoted to sales in the merchant market than the output of integrated producers. Thus, the USITC also found that the minimills had a worse financial performance than integrated producers during the latter part of the period of investigation -- the time when dumped import volumes were the greatest. Analyzing the performance of an established and efficient minimill that was identified as a price leader, the USITC found that it experienced significant price declines while dumped import volumes were increasing and only stopped this trend when dumped imports exited the U.S. market.

51. Finally, the USITC properly rejected attempts to blame nonsubject imports for the injury to the industry producing hot rolled steel in the United States. Nonsubject imports maintained a stable presence in the U.S. market while dumped imports more than doubled their market share in

both the merchant market and the market as whole. There is no basis to conclude that the USITC incorrectly attributed to subject imports effects that were really due to the steady volume of nonsubject imports.

52. The captive production provision and the determination by the USITC are in keeping with the Antidumping Agreement. In fact, the captive production provision assures a full evaluation of the factors listed in the Agreement. The USITC's determination in this case objectively assessed the effects of dumped imports on the state of the domestic industry as a whole in finding that they caused material injury.

53. ***Mr. Hirsh.*** Mr. Chairman and members of the Panel, we have devoted our efforts today to demonstrating how each agency's actions, in the context of the facts of each specific issue, are consistent with the pertinent provisions of the Anti-dumping Agreement. It is on that basis – and not on the basis of vague allegations of conspiracy – that this Panel must judge the issues in this case. At this point, we would be pleased to entertain the questions of the Panel, as well as the questions of Japan. In turn, we look forward to posing questions to Japan. Thank you, Mr. Chairman and members of the Panel.